

HOUSE BILL REPORT

SHB 1326

As Passed House:

March 4, 2005

Title: An act relating to the public employment of retirees from the teachers' retirement system and the public employees' retirement system.

Brief Description: Restricting the public employment of retirees from the teachers' retirement system and the public employees' retirement system.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Conway, Crouse, Simpson and Chase; by request of Select Committee on Pension Policy).

Brief History:

Committee Activity:

Appropriations: 2/9/05, 2/21/05 [DPS].

Floor Activity:

Passed House: 3/4/05, 94-2.

Brief Summary of Substitute Bill

- Defines separation from service in the Teachers' Retirement System (TRS) as excluding circumstances where an employee and his or her employer have an oral or written agreement to return to work following termination; in both TRS and the Public Employees' Retirement System (PERS), mere inquiries about postretirement employment do not constitute an agreement.
- Adds a gross misdemeanor penalty to the TRS for making a false statement to the Department of Retirement Systems related to separation from service.
- Requires that PERS and TRS Plan 1 retirees only be rehired pursuant to a written employer policy on hiring retirees.
- Lengthens to one and one-half months the break in employment after separation from service in TRS Plan 1 required for 1,500 hours of postretirement employment without suspension of pension benefits.
- Increases the cumulative lifetime total hours a retired member of PERS Plan 1 may work beyond 867 hours each school year without suspension of retirement benefits to 1,900 hours after the effective date of the act, and places this same limit on TRS Plan 1.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 28 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Bailey, Buri, Clements, Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hinkle, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Miloscia, Pearson, Priest, Schual-Berke, Talcott and Walsh.

Staff: David Pringle (786-7310).

Background:

Retired members of the Public Employees' Retirement System, Plan 1 (PERS 1), or the Teachers' Retirement System (TRS 1), who re-enter employment with an eligible employer within one month of retiring are subject to a benefit reduction. The reduction is equal to 5.5 percent of the monthly benefit for every eight hours worked that month and is applied until such time as the retiree remains absent from eligible employment for at least one full calendar month.

Separation From Service

A member must separate from service in order to qualify for a retirement allowance. Separation from service is defined in PERS to mean that the member has no oral or written agreement to resume work with their employer after entering retirement. In contrast, separation from service in TRS requires that the member have no written agreement to resume work with their employer after entering retirement. After entering retirement status, a member may begin his or her retirement allowance on the first day of the month following the month that he or she applies for retirement benefits. The date that retirement benefits begins is referred to as a member's "accrual date."

Length of Separation From Service

Retirees from PERS 1 who have been separated from service for one calendar month after their accrual date may work up to 867 hours per calendar year without a reduction in pension benefits. Retirees from PERS 1 who have been separated from service for three calendar months, and whose hiring meets specific approval and record-keeping requirements, may work up to 1,500 hours per calendar year without a reduction in pension benefits. Once the 1,500 hour limit is exceeded, pension benefits are suspended until the beginning of the next calendar year.

Retirees from TRS 1 who have been separated from service for one calendar month may work up to 1,500 hours per year without a reduction in pension benefits.

False Claims

Both PERS and TRS have provided sanctions for filing false statements to the Department of Retirement Systems (DRS) since 1947. A person who files a false record or false statement to the DRS in any attempt to defraud the retirement systems is guilty of a gross misdemeanor in

PERS and a felony in TRS. The felony provision in TRS was made a class "B" felony by the 2003 Legislature.

1,900 Hour Lifetime Limit

The number of years a PERS 1 retiree may work for 1,500 hours without a reduction in benefits is limited, however. Each PERS 1 retiree may only work for a lifetime cumulative limit of 1,900 hours beyond 867 hours per calendar year.

The 2003 Legislature passed SHB 1829, which added additional restrictions on reemployment by retirees that currently apply to PERS 1 but not TRS 1. Substitute House Bill 1829 contained provisions adding similar restrictions to TRS 1, but those sections were vetoed by the Governor.

Summary of Substitute Bill:

Separation From Service

The definition of "separation from service" in PERS is amended to specify that expressions or inquiries about postretirement employment by employers or employees do not constitute an agreement, and does not mean that separation from service did not occur. The definition of "separation from service" in TRS is amended to include the same language as PERS, as amended in the bill. Separation from service does not occur in TRS when an employee and employer have a written or oral agreement to resume employment following termination. Claiming separation from service, and eligibility for a retirement benefit, when such an agreement exists may violate the TRS false claims provision.

Length of Separation From Service

Retirees from TRS 1 who have been separated from service for one and one-half calendar months may work up to 1,500 hours per year without a reduction in pension benefits.

False Claims

An additional false claims provision is added to TRS, providing a gross misdemeanor penalty related to a member's separation from service and qualification for a retirement allowance. The break in employment after separation from service required for 1,500 hours of post-retirement employment in TRS 1 is one and one-half calendar months.

Written Employer Hiring Policies

Several procedures for hiring retirees are added to TRS 1, and the PERS 1 procedure is also modified. A school board or the other highest decision-making authority must approve hiring a retiree. In both PERS 1 and TRS 1, an employer must hire a retiree pursuant to a written policy and must document a justifiable need to hire a retiree into the position being filled. The employer must also hire the retiree through the established process for the position, retain records of the procedures followed and decisions made in hiring, and provide those records in the event of an audit.

1,900 Hour Lifetime Limit

After the effective date of this act, TRS 1 and PERS 1 retirees are restricted to a lifetime cumulative total of 1,900 hours of postretirement employment in excess of 867 hours per school or calendar year while in receipt of a benefit.

TRS Employer Contributions

The employer of retired TRS 1 employees who work more than 867 hours in a school year is required to pay both employer contributions as if the member were active, and an additional amount of employer contributions equivalent to the TRS 1 employee contributions that the employee would have made if active.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed, except sections 1 through 4 and 6, relating to the definition used in the PERS and TRS chapters, which take effect January 1, 2006, and sections 5 and 7, relating to the definitions of PERS and TRS with references to the Public Safety Employees' Retirement System added, which take effect July 1, 2006.

Testimony For: We don't support all elements of this bill, and we are concerned with the 5-year limit, but overall we support the bill. Some districts might need this, but some probably need no limit. We support the written policy element in particular, as some younger teachers are complaining that retirees are taking their spots, and that an old-boy's network is abusing the retire-rehire system. Greater certainty can be provided by adding safeguards, like requiring the highest authority to authorize a hiring. Most importantly, we appreciate the clarification on the separation from service definition. The workforce is changing, and the news has recently shown that more job applicants are older, over age 55. In part this is driven by concerns about health benefits. In solving this problem, abuses have clearly occurred. Most districts already have policies in place, and some shortages exist, including for principals and superintendents. Many of our Plan 1 members hit the 30-year cap in their early 50's and have little incentive to keep working. This lets the best be rehired. While some problems have arisen, overall this is a valuable program. We use this for seven administrative law judges. During a recent flood of cases, we used the program to hire back some retirees for a short time, some of them for more than 867 hours in some years. I need the capacity to bring these retirees back when necessary.

(With concerns) Some retired teachers were rehired because they were said to be a "calming influence" - not a good enough reason. Some retirees are being placed in continuing contracts, and staying for longer than is necessary. The experienced are always more qualified, but shouldn't always be rehired.

Testimony Against: None.

Persons Testifying: (In support) Cassandra de la Rosa, Retired Public Employees Council; Art Wang, Office of Administrative Hearings; John Kvamme, Washington Association of School Administrators and Association of Washington School Principals; Bev Hermanson, Washington Federation of State Employees; and Randy Parr, Washington Education Association.

(With concerns) Bob Franks.

Persons Signed In To Testify But Not Testifying: None.